

REMARKS

Reconsideration of the above-identified patent application in view of the remarks following is respectfully requested.

Claims 1-9 and 18-23 are pending in the application. In the Office Action dated January 27, 2009, all claims were rejected. The rejection is respectfully traversed.

§ 103(a) Rejections

Claims 1-9 and 18-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gordon (US 2003/0219513) in view of Mackay (UK 2,119,633), Matson (US 2006/0160050) and Riling et al (US 5,582,028). The rejection is respectfully traversed. Applicant notes that the rejection arguments based on Gordon have changed from the previous Office Action, and include now a combination with Mackay and Matson, in view of which Applicant's previous response arguments were found moot.

The Examiner appears to agree with Applicant's argument in his last response that Gordon discloses a method and a system for monitoring or controlling and recording a nutritional intake of a subject comprising providing a plurality of different types of foods packaged to contain a predetermined and substantially uniform content of at least one nutritional component; and monitoring or controlling the number of food packages consumed during a predetermined time period.

The Examiner states that Gordon discloses an assembly of food units for use in effecting the method and the system (Abstract). Applicant respectfully submits that this assembly is not a portable kit but a presentation of food units on a presentation stand preferably designed and configured as a display 23 [0107]. As such, an "assembly" in Gordon is irrelevant to the present invention. It is not portable and it is not a kit. The package in FIG. 5a is a simple one level box. The Examiner further states that Gordon discloses spatial organization of foods in levels (FIG. 5b). Applicant respectfully submits that the levels of FIG. 5b of Gordon are just convenient ways to present identical content packages on a presentation stand. There is no connection between the "levels" in the presentation stand of his FIG. 5b and the

package in his FIG. 5a. The two figures show two alternative embodiments. The "levels" on the presentation stand of FIG. 5b have nothing in common with the levels in the portable kit recited in claims 1 and 18 as a key inventive feature and limitation. Therefore, the conclusion drawn by the Examiner (page 3) that "Gordon discloses a system ..., comprising an assemblage of plurality of foods placed in a cartons which can be called a "portable kit",... with said foods organized in stacked levels..." is in Applicant's opinion factually wrong. There are no stacked levels in a carton that can be considered a portable kit. The rest of the Examiner's statements re. the identification of different types of foods via labels or markings are irrelevant to the present invention, which does not claim any such labels or markings.

In essence, the Examiner's position appears to be that Gordon discloses essentially all of the limitations of claims 1 and 18 except, for claim 1 (and Applicant assumes for claim 18, although this is not stated explicitly), the substantially similar carbohydrate content varies from level to level and the spoiling prevention means. Applicant respectfully disagrees. In fact, Gordon fails to disclose most of the limitations of claims 1 and 18, as indicated above. Moreover, as already argued by Applicant in his previous response, Gordon actually teaches away from the present invention by focusing on purpose on the key feature that all the foods must have a predetermined and substantially uniform content of at least one nutritional component and by emphasizing calories as the key embodiment of the nutritional component, while paragraph [0024] in Applicant's disclosure clearly states that "*This diet does not count calories - in fact, the number of calories in the foods eaten is not important*".

With regard to Mackay and Matson, Applicant respectfully submits that neither teach all the limitations missing in Gordon. Mackay discloses a compartmented dish with different regions marked in a different manner to indicate the dietary characteristics of different types of food intended to be placed in each region. The regions may correspond to the different compartments, or may additionally or alternatively sub-divide the compartments. The different regions are always marked, for example by color and may have different sizes. Moreover, different size and shape dishes may be provided for different meals.

Applicant fails to understand how Mackay is relevant to the present invention at all. Mackay's dish has also one level, and a compartment may be divided into regions that include different foods. A compartment 24 is divided by a line 22 such

that two foods share it, which actually teaches away from the present invention. The variation of carbohydrate content between compartments that are at the same level (as in a dish) also teaches away from the present invention. The Examiner, by stating that Gordon does not disclose the feature of claim 1 of "wherein said substantially similar carbohydrate content varies from level to level", implies that Mackay discloses this feature. Applicant most emphatically disagrees. There is absolutely no suggestion anywhere in Mackay of varying carbohydrate content from a level to another in a spatial arrangement (stack), simply because Mackay does not address "levels" at all. The conclusion drawn by the Examiner (page 4) that "Mackay discloses the feature of variable carbohydrate content from one compartment to another, which are marked in a different manner, e.g. by color coding, to indicate different levels of carbohydrate content (i.e. low, moderate and high)" is doubly irrelevant: a) the only manner in which carbohydrate content varies in present invention is from level to level – not at the same level (as in different compartments in Mackay's dish), and b) the "levels of carbohydrate content" seem to imply connection to "levels" of the present invention, where there is none. Therefore Applicant submits that Mackay not only does not fill in any limitation missing in Gordon re. claims 1 and 18, but by teaching away from the invention and in combination with Gordon's teaching away, makes the present invention even more non-obvious.

The Examiner states that Matson discloses organizing foods in a vertical arrangement with different values of controlled variable (volume). However, it is amply clear that Matson's system works always with different dietary food groups (e.g. proteins and carbohydrates), and is not a carbohydrate only diet based on a total or predetermined carbohydrate content that equals a daily carbohydrate intake (as claimed in claims 1 and 18 of the present invention). His specific examples in Table 2 shows, on the same level, two different carbohydrate content foods and a protein food. As such, Matson also teaches away from the present invention. Even when stacked as in his FIG. 3D, there is a mix of food groups consumed over time. Moreover, his functional packaging 390 comprises an envelope feature 391 for holding a menu 392 and a dietary schedule 393. The dietary schedule is always needed for the user to make entries for monitoring his progress.

Matson has no concept of a predetermined total carbohydrate content in the kit matching a daily carbohydrate intake, as claimed in claims 1 and 18. The arrangement by Matson of foods in levels or sequences based on different values of a controlled variable (volume) adds nothing to the missing limitations of these claims, i.e. "wherein each level includes foods of substantially similar carbohydrate content and wherein said substantially similar carbohydrate content varies from level to level". Matson, similarly to Gordon and Mackay, does not disclose levels with foods having substantially the same carbohydrate content on each level and different carbohydrate content on different levels.

It her summary of the combination of Gordon, Mackay and Matson, the Examiner concludes that the references are seen to have been a general teaching to one of ordinary skill in the art to package on the basis of any nutrient desired, including carbohydrates, and arrange them in any sequence desired. This misses the entire point of the present invention, which was stated by Applicant in the previous response as:

"Applicant reiterates his rebuttal of Examiner's position, a rebuttal presented in a previous Response and which the Examiner seems to have ignored by finding new grounds for rejection and therefore considering previous Applicant arguments as moot. As argued previously by Applicant, the configuration of the kit is not a matter of choice but of a definite design: levels include less and less foods as the food carbohydrate content increases. As argued in a previous Response, the different (varied) carbohydrate content of the food in different levels claimed in claim 18 has a criticality explained by Applicant in detail:

The configuration of the claimed kit is an essential inventive feature in that the amount of foods (and containers) in each level decreases from foods with low or zero carbohydrate content to foods with high carbohydrate content, when the total carbohydrate content of the kit is predetermined. The configuration allows for easy understanding and remembering of which foods have which carbohydrate content (zero-low, medium or high)., see e.g. specification p. 11, lines 7-9 and 12-20.

Rearranging the foods in a kit would certainly modify the operation of the kit: for example, in the arrangement recited in claim 3, any change between levels will increase the total carbohydrate content of the kit, defeating the purpose of weight loss

by providing a total carbohydrate content larger than the predetermined amount. No prior art structure performs the intended use of the present invention, i.e. a diet regimen based on a defined, limited carbohydrate content, based on foods organized in a kit according to carbohydrate content (see specification, p. 11, lines 10-20)".

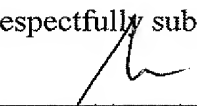
With respect to Riling et al., Applicant repeats his argument from the previous response that while disclosing such means, Riling et al. fail to disclose any of the limitations recited in claims 1 and 18 which are missing in Gordon, Mackay and Matson. Thus, Riling et al. do not disclose foods with varied carbohydrate content being arranged in any common arrangement such as a kit by levels according to a carbohydrate content order, wherein each level includes foods of substantially similar carbohydrate content and wherein said substantially similar carbohydrate content varies from level to level. Since neither Gordon, not Mackay, nor Matson nor Rilling et al teach or suggest all of the limitations of claim 1 or claim 18, Applicant respectfully submits that the Examiner has failed even to state a case of *prima facie* obviousness re claim 1 or 18 based on the combination of Gordon, Mackay, Matson and Rilling et al. Moreover, as argued above, Gordon, Mackay and Matson each teaches away in different ways from the invention. Therefore, the combination of Gordon, Mackay, Matson and Rilling et al. teaches away from the invention as well. *Mutatis mutandis*, the failure to state a case of *prima facie* obviousness and the teaching away from the invention extend to all claims dependent from claim 1, including claims 2-9. Moreover, similar arguments apply to claims 19-23, which depend from claim 18. More specifically:

In regard to claim 3, Applicant submits that Gordon, Mackay, Matson and Rilling et al., alone or in combination, do not teach wherein said levels vary from a bottom level with N containers of substantially carbohydrate free foods to a top level with M containers of high carbohydrate content foods, and wherein $M < N$.

In regard to claim 23, Applicant submits that Gordon, Mackay, Matson and Rilling et al., alone or in combination, do not teach wherein said plurality of foods stored in said storage units according to a carbohydrate content order include carbohydrate-free foods stored in storage units near said bottom and at least one carbohydrate rich food stored in at least one storage unit near said top.

In view of the above amendments and remarks it is respectfully submitted that Claims 1-9 and 18-23 are in condition for allowance. Prompt notice of allowance is respectfully and earnestly solicited.

Respectfully submitted,



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